

**BOCHETTO & LENTZ, P.C.**

By: Gavin P. Lentz, Esquire  
Vincent van Laar, Esquire  
Attorney I.D. Nos.: 53609, 85672  
1524 Locust Street  
Philadelphia, PA 19102  
(215) 735-3900

**IN THE UNITED STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>DON TROIANI</b>	:	<b>CIVIL ACTION</b>
	:	
	:	<b>NO. 02-04050</b>
Plaintiff,	:	
	:	
v.	:	
	:	
<b>WISDOM ENTERTAINMENT, LTD. et al.,</b>	:	
	:	
Defendants.	:	

**PLAINTIFF'S PRE-TRIAL MEMORANDUM**

Plaintiff, Don Troiani ("Plaintiff"), by and through undersigned counsel, Bochetto & Lentz, P.C., hereby submits his Pre-Trial Memorandum and in support thereof, avers as follows:

**I. BRIEF STATEMENT OF THE NATURE OF THE ACTION AND THE BASIS ON WHICH JURISDICTION OF THE COURT IS INVOKED.**

This is a copyright infringement case in which Defendants literally copied parts of several of Plaintiff's copyrighted paintings and placed them on the covers of their videos titled, "*Battle for Glory*" and "*Blood and Honor*."

Jurisdiction is founded upon 28 U.S.C. §1400(a) and 15 U.S.C. §1125(a) in that Plaintiff, Don Troiani ("Mr. Troiani") is the owner of a valid copyright which has been infringed upon by the acts of Defendants herein. Jurisdiction over this action is also proper

before this Court pursuant to 28 U.S.C. §1332(a)(1) and §1332(c) because Plaintiff and all Defendants are citizens of different states and the amount in controversy exceeds Seventy-Five Thousand (\$75,000) Dollars, exclusive of interest and costs.

## **II. PLAINTIFF'S STATEMENTS OF FACTS**

This litigation arose as a result of Defendants unlawfully and direct copying of Plaintiff's copyrighted artworks by using them on the covers of their videos "*Battle for Glory*" and "*Blood and Honor*." Specifically, Plaintiff's copyrighted artworks entitled, "The Boy Colonel," "Retreat by Recoil," "Bronze Guns and Iron Men," "Burnside's Bridge" and "Opdycke's Tigers" were exactly duplicated and copied on the cover of the video "*Battle for Glory*."

In addition, Plaintiff's copyrighted artwork "Forward the Colors" was exactly copied on the video cover of "*Blood & Honor*." The similarities of the infringing work compared to Plaintiff's art works are striking.

## **III. PLAINTIFF'S CLAIMS FOR DAMAGES**

As Defendants have not provided any objective evidence of its profits, Plaintiff has been unable to determine the extent of Plaintiff's damages. However, the copyright statute provides for damages ranging between \$15,000 and \$150,000 or Defendant's profits and costs.<sup>1</sup>

## **IV. WITNESSES**

1. Plaintiff, Don Troiani. Mr. Troiani will testify to the facts set forth in Plaintiff's Complaint and will describe when and where he painted the works of

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<sup>1</sup> Because Defendant has not provided any evidence on the issue of damages, Plaintiff reserves the right to further supplement this pre-trial memorandum on this issue.

art that are now infringed.

**V. SCHEDULED EXHIBITS TO BE OFFERED AT TRIAL BY PLAINTIFF**

1. Plaintiff's Complaint.
2. Defendant's Answer.
3. Plaintiff's Discovery Requests
4. Defendant's Responses to Plaintiff's Discovery Requests.
5. Copies of All of Plaintiff's Certificates of Registration of the artworks at issue.
6. Copies of the Paintings at issue.
7. Copies of all correspondence in connection with this litigation.

**VI. ESTIMATED NUMBER OF DAYS REQUIRED FOR TRIAL**

Plaintiff expects to complete his case-in-chief in (1) day.

Respectfully submitted,

**BOCHETTO & LENTZ, P.C.**

By: \_\_\_\_\_  
Gavin P. Lentz, Esquire  
Vincent van Laar, Esquire  
Attorney for Plaintiff

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<b>DON TROIANI</b>	:	<b>CIVIL ACTION</b>
	:	
Plaintiff,	:	
	:	
v.	:	<b>NO. 02-CV-4050</b>
	:	
<b>WISDOM ENTERTAINMENT, LTD., ET AL.</b>	:	<b>JURY TRIAL DEMANDED</b>
	:	
Defendants.	:	

**CERTIFICATE OF SERVICE**

\_\_\_\_I, Vincent van Laar, Esquire, hereby certify that a true and correct copy of Plaintiff's Pre-Trial Memorandum were served on this 21<sup>st</sup> day of February, 2003 via First Class Mail, postage pre-paid and Facsimile to the following:

Simon Rosen, Esquire  
1515 Market Street  
Suite 1810  
Philadelphia, PA 19102  
(215)568-7123

**BOCHETTO & LENTZ, P.C.**

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Vincent van Laar, Esquire